STATE OF ALASKA

IBLA 80-564 Decided September 24, 1981

Appeal from decision of the Fairbanks District Office, Bureau of Land Management (BLM), declaring right-of-way grant F-026085, extinguished.

Appeal dismissed.

1. Appeals--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal

   Neither the State of Alaska nor an instrumentality thereof has standing to appeal a decision which recognizes that full title to a parcel of land is in the State, absent a showing of injury in fact from such a decision.

APPEARANCES: Larry D. Wood, Esq., Assistant Attorney General, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The State of Alaska appeals from a decision of the Fairbanks District Office, Bureau of Land Management (BLM), dated March 6, 1980, declaring right-of-way grant F-026085 extinguished.

On September 22, 1961, the State of Alaska, Department of Highways, was granted a right-of-way for the above-identified material site. This right-of-way was within lands subsequently patented to the State of Alaska on July 28, 1972. See Patent 50-73-0018. By decision of March 6, 1980, BLM held that when the patent was issued to the State of Alaska the right-of-way interest merged with the fee title and was thereby extinguished.

On appeal the State contends that the doctrine of merger is inapplicable because two separate and discrete State instrumentalities are involved: The Department of Highways (now the Department of Transportation and Public Facilities) which was granted the right-of-way, and the Department of Natural Resources, Division of Lands, which acquired the fee title. The State contends that each Department has been granted separate authority to acquire and dispose of lands, and, since each is a separate entry, the doctrine of merger should not apply, citing Wessels v. State Dept. of Highways, 552 P.2d 1042 (Alaska 1977).

We would note, however, that the standing of the State of Alaska to appeal to this Board on this question is the first issue which must be examined. In Arizona State Highway Dept., A-29325 (Oct. 21, 1963), an appeal to the Secretary from a denial of an application for a material site was dismissed on the ground that since the decision below was based on a holding that the State had acquired title to the surface minerals sought, the decision could not be adverse to the State, even though there was a mineral reservation in the patent. The decision noted:

> The patents to the three parcels in question were issued to the State of Arizona and not to any particular agency of the State. The Bureau's decision held that these patents conveyed to the State the sand and gravel deposits sought by the Highway Department and that they were not excepted by virtue of the mineral reservations. This ruling was favorable to the State. I am unable to see then that any agency of the State has any standing to challenge the ruling by an appeal to the Secretary. Certainly if the State in its own name and not acting through any of its agencies had applied for the permits, thinking that perhaps the sand and gravel were reserved to the United States, and the Bureau had rejected the applications for the reason that the State owned the sand and gravel, the State could not appeal from such a ruling. It follows, a fortiori, that an agency of the State stands in no better position.

This holding was expressly approved in United States v. Isbell Construction Co., 4 IBLA 205, 219-22, 78 I.D. 385, 392 (1971).

So too, in the instant case we note that the patent actually issued not to the Department of Natural Resources, but to the State, itself. While in this case we recognize that the material site right-of-way predated the patent, we do not feel that this is a distinction of much import. Inasmuch as the State Office's decision recognized full title in the State, we fail to see how an instrumentality of that State can claim injury from such a decision.

We are aware of the fact that pursuant to section 9(c) of the Act of December 18, 1971, 85 Stat. 694, 43 U.S.C. § 1608(c) (1976), the patent which issued in 1972 contained a reservation, for the benefit of the Natives and for payment in the Native Trust Fund, of a royalty of 2 percentum of the gross value of the minerals thereafter produced from

the lands patented. Thus, it is conceivable that the State might contend that by merging the two estates the State would be liable for the royalty, whereas it would not be so liable if the separate estates were maintained.

However, we note that the State has not so argued. Moreover, inasmuch as section 9(g), 43 U.S.C. § 1608(g) (1976), provides that such reservations as are mandated shall continue only until a sum of $500,000,000 has been paid into the Alaska Native Fund, the moneys derived from this source would merely be a replacement for moneys derived from other sources. Thus, we fail to see how the possibility that the State would now be liable for royalty payments could serve as a predicate for a showing of the requisite standing.

As we have often noted, any party adversely affected by a decision may appeal therefrom. See United States v. United States Pumice Co., 37 IBLA 153 (1978). The State, however, has neither shown nor alleged injury. Thus, its appeal is not properly before us and must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge